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THE EDUCATION OF ROMAN LAW FROM 1874 TO 1894 IN JAPAN THE TRANSITION OF CONTEMPORARY MODEL OF LEGAL SYSTEMS IN THE WEST AND THE INTELLECTUAL BACKGROUNDS OF PROFESSORS IN CHARGE OF ROMAN LAW

Abstract. This article focuses on the position of Roman law in Japanese legal education from 1874 to 1894. Japanese law was drastically Westernised during this period, taking inspiration from Europe, and was modelled after common law and French law simultaneously. German law then became more dominant at the end of the period. All professors from Europe, regardless of their country of origin or legal background, unequivocally emphasised the importance of Roman law as the common basis of Western laws when teaching their Japanese pupils. Some of those pupils later contributed substantially to academic arguments on Roman law. Most notably, this period secured the place of Roman law in modern legal education in Japan.

Keywords: legal education, Roman law, *droit naturel*, reception of law, codification, *Pandekten*.

NAUCZANIE PRAWA RZYMSKIEGO W JAPONII OD 1874 DO 1894 ROKU. PRZEJĘCIE WSPÓLCZESNEGO MODELU ZACHODNICH SYSTEMÓW PRAWNYCH ORAZ INTELEKTUALNE POCHODZENIE PROFESORÓW PRAWA RZYMSKIEGO

Streszczenie. Artykuł koncentruje się wokół zagadnienia pozycji prawa rzymskiego wewnątrz japońskiego modelu edukacji prawniczej w latach 1874–1894. Prawo japońskie poddane zostało w tym czasie głębokiej okcydentalizacji, biorąc przykład z Europy, oraz zostało jednocześnie ukształtowane na wzór *common law* i prawa francuskiego. Prawo niemieckie zyskało wiodącą rolę pod koniec tego okresu. Wszyscy przybywający z Europy profesorowie, niezależnie od kraju czy porządku prawnego ich pochodzenia, jednogłośnie wskazywali na znaczenie prawa rzymskiego jako wspólnej podstawy praw zachodnich, głosząc wykłady dla swoich japońskich studentów. Niektórzy z tych studentów w istotny sposób przyczynili się następnie do formułowania naukowych

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argumentów na rzecz prawa rzymskiego. Przede wszystkim, to właśnie ten okres doprowadził do zabezpieczenia pozycji prawa rzymskiego we współczesnym modelu japońskiej edukacji prawniczej.

Słowa kluczowe: edukacja prawnicza, prawo rzymskie, prawo naturalne, recepcja prawa, kodyfikacja, pandekta.

1. INTRODUCTION

In this article, I present a brief overview of Roman law education in Japan in the early Meiji era, when a drastic modernisation and Westernisation of Japanese law occurred under the Meiji government. The story begins when William Ebenezer Grigsby, an English youth training to be a barrister, was recruited to be a professor at the *Tokio Kaisei-Gakko* in Tokyo and delivered his first lecture on Roman law to Japanese students in 1874. It ends in 1894, when Hirono Tomizu, a Japanese-qualified English barrister, assumed the position of Professor of Roman and Civil Law at the *Teikoku Daigaku* (Imperial University), the former *Tokio Kaisei-Gakko*.

Here, I will provide a rough outline of Japanese history. After the Meiji Restoration in 1868, a sort of *coup d'état* by lower-grade samurai, the new Japanese government was keen to reform the legal system which, until then, had comprised of law originating in Japan and received from Chinese. It had to be modernised, which could only mean “Westernisation” under the circumstances. The unequal commerce treaties between Japan and leading Western countries, as well as consular jurisdiction, remained as a negative legacy of the Edo (Tokugawa) government; the Meiji government had to Westernise the legal system to be recognised as a new nation in order to receive equal diplomatic and international political treatment.

Japan may have been unique in enjoying a choice between multiple contemporary models for its legal reforms. Unlike former colonies, the country did not wholly inherit the legal system of a coloniser. If we glance at modern Japanese history, we find that the Edo government adopted a nation closure policy (*Sakoku*) until the mid-19th century. It should be mentioned that during this time, Holland and China were permitted to perform commerce and cultural exchange in a limited way. However, at the end of the period, not only the United States of America, but also United Kingdom, France, and Russia among others, tried to approach the Edo government diplomatically. Such countries also tried to promote the Westernisation of Japan in anticipation of mutual gains. The Edo government was forced to abandon the *Sakoku* policy under the threat of naval force by Western countries, in particular the USA, which found commerce with Japan to be beneficial. Japan was geopolitically situated between China and the USA and so, the USA demanded that some ports be opened to develop trade. Ports in Japan and trade with Japan were attractive to Western countries which hoped to develop commerce and gain more influence in the Asia-Pacific region.

Throughout the Edo era, the government ruled over clans, but gradually lost its hegemony and was eventually defeated by some clans, which later formed the new Meiji government. It should be noted that there were several foreign actors in Japan at the time. For example, the United Kingdom first fought with the Satsuma clan, which later became the leading actor of the Meiji regime. In the well-known Anglo-Satsuma War (*Satsu-Ei Sensou*) in 1863, the United Kingdom vessels overwhelmed the Satsuma forces. The leaders of Satsuma realised the great difference in military power between them and also the highly developed technologies the British enjoyed. In that context, the leaders of Satsuma approached British diplomats to gain favour and took the United Kingdom as its model for Westernisation in various fields including law. Thus, the UK became one ideal model for some influential leaders within the Meiji government. On the other hand, French diplomats kept on supporting the Edo government and offered them the latest knowledge and techniques, which were preserved and developed even after the Meiji Restoration by Edo bureaucrats who were hired by the new government. French tradition is obvious in three fields: law, ship building, and military strategy (Iida 1998, 5). Particularly in the field of law, bureaucrats and scholars with French backgrounds regarded France as an advanced country due to its success in early codifications of law. As such, there was potential for conflict over which Western model should be adopted by the Meiji government.

Therefore, at the national political level, the unique situation of being able to choose model legal systems was reflected in the establishment of institutions for legal education.¹ In 1874, the Meiji government founded a law course at the *Tokio Kaisei-Gakko*, a national educational institution under the supervision of the Ministry of Education and Culture, where English and US common law was primarily taught. After repeated renaming, it eventually became the Faculty of Law at the University of Tokyo.

Separately, in 1871, the Ministry of Justice founded a department called *Myohbo-Ryoh* (Department to Clarify Law), for judges and judicial bureaucrats who had Western legal backgrounds (Tezuka 1988, 7). The students were first taught the French language and general subjects, followed primarily by French law in upper grades. Since the end of the Edo era, attention was on the French legal system, especially in the area of court practice. Even after the abolition of the *Myohboh-Ryoh* in 1875, the school at the Ministry of Justice continued to nurture judges-to-be, until it was merged with the Faculty of Law at the University of Tokyo in 1885 (Tezuka 1988, 44, 131).

As described above, the English and French models coexisted in the Japanese legal education system from 1874 to 1885. Thereafter, there was a gradual turn from the English to the German model in the 1880s. With the institutional

¹ For a brief overview of the Westernisation of modern Japanese law in English, see Oda (2009, 13–20).

incorporation of the school into the Ministry of Justice in 1885, the English model appeared to dominate the French model. However, the English model was gradually overtaken by the German one.

Despite these transitions, or more precisely, the struggle among the schools that bore the traditions of Western nations' legal systems or science, the practice of respecting and studying Roman law as the common basis of Western legal systems remained untouched. Let us now consider the praxis of education, the professors' intellectual background, and the place of Roman law education in each school in more detail.

2. ENGLISH TRADITION AND ROMAN LAW EDUCATION

Grigsby delivered the first lecture, entitled "Roman Law," in 1874, at *Tokio Kaisei-Gakko* (Hayashi 2013a, 923–927). He was born in 1847, in Essex, England and studied Greek, Roman, and Hebrew, as well as divinity, from 1864 to 1869, at the University of Glasgow, where he obtained an M.A. degree. He then read law at Balliol College at the University of Oxford where he obtained a B.C.L. degree. On 22 November 1873, he was registered at the Inner Temple, one of the four Inns of Court in London, and was receiving professional training from senior colleagues when he was recruited in 1874 as a professor for a newly established law course at the sole undergraduate-level national educational institution in Japan.

On arrival in Tokyo on 6 May 1874, he assumed his professorship. Along with classes entitled, "Equity," "Agency," "Partnership," "International Law," "Criminal Law," and "Law of Real and Personal Property," he taught "Roman Law" to elite students who had been recommended by feudal clans to study Western legal systems. Nobushige Hozumi, who attended Grigsby's first class, recalled that there were nine male students. A US citizen, Professor H.N. Allin, was his sole colleague from abroad at the time.

Although the students were taught basic Latin at the primary level, Grigsby is presumed to have taught according to Justinian's Institutes in the English translation. Neither the textbooks nor notebooks of the students are extant. The only way to presume the content of Roman law education in his class is through examinations reported in the annual album of the *Tokio Kaisei-Gakkoh*, as follows (Calendar 1876, 85f; Hayashi 2013a, 926f, 941f):

1. What is meant by Fidei-commissa? To what are they analogous in English law?
2. Translate and explain: (1) "*Legari autem illis solis potest, cum quibus testamenti factio est,*" (2) "*Falsa demonstratione legatum non perimi*?" and (3) "*Quantitas autem patrimonii ad quam ratio legis Falcidia redigitur mortis tempore spectator.*"
3. What is meant by an impossible condition? What is the effect of it (1) in a legacy and (2) in an obligation?

4. Trace the gradual steps by which a mother was allowed to succeed to the property of her children?
5. What was the contract *verbis*? To what kind of contract does it correspond in English law?
6. Give the chief incidents of contract of sale.
7. Enumerate the obligations *Quasi ex contractu*, and show what is meant by them.
8. Explain and comment on the phrase *Praetor non facit heredem*.

The examination did not deal with a detailed *casus*, and the course seems to have been an introductory one, which could be reflective of the young common law trained barrister's comprehension of Roman law. Nevertheless, the notion of importance was implanted in the minds of the students, some of whom (Nobushige Hozumi, Teruhiko Okamura and Naoshi Sagisaka) were sent to London in 1876 to further study common law at Middle Temple. All three qualified as barristers at Middle Temple.²

Grigsby left his professorship and returned to England in 1878. Although the Roman law class disappeared at the University of Tokyo with his departure, it was revived in 1882, and has been taught ever since. Japanese professors, as well as those from Germany and the USA, taught Roman law from 1882 to 1894 (Yoshihara 2018, 3–6; Yoshihara 2019, 2–5).³

A US attorney, Henry Taylor Terry, taught Roman law to first-year students from 1882 to 1884, while Otto Rudorff came from Germany in 1884 to teach the subject (Yoshihara 2018, 3f).⁴ Azumi Watanabe, a Japanese professor, taught Roman law to the students of the newly founded *Bekka Hoh-gakka* (an extra law course) in Japanese from 1883 to 1887. Hozumi returned from Berlin and

² Of Hozumi's two mates in London, Sakisaka died a premature death at the age of 28 (see Shiozawa et al. 2000, 10). Okamura became a judge at the *Taishin-in* (Supreme Court) in 1883, and president of the private Chuo University in 1913 (Hozumi 1988, 124). Chuo University was originally founded as *Igirisu Horitsu Gakko* (English Law School) in 1885, a private law school where common law education was dominant. At this institution, Roman law was taught as an independent subject. Chuo stands for "middle," and the name is connected with Middle Temple. I do not deal with all the private law schools which were founded in Tokyo in this period, and merely refer to two with a French legal tradition as examples. However, they also played an important role in the legal education, and maintain their academic tradition to date. In addition to the above mentioned *Igirisu Horitsu Gakko*, *Tokyo Hogakusha* (Tokyo School of Law, founded in 1880) and *Meiji Horitsu Gakko* (Meiji Law School, founded in 1881) mainly taught French law. In the latter two institutions, no independent Roman law class was recognised at the foundation level. Each private law school represented the competing traditions of each national law. For a brief historical introduction to the above three institutions, see the following links, all of which were viewed on 14 April, 2021: <http://global.chuo-u.ac.jp/english/aboutus/history/>; <https://www.meiji.ac.jp/cip/english/about/history/index.html> and <https://www.hosei.ac.jp/english/about/outline/history/>.

³ Along with the Roman law studies as his major works, Yoshihara worked continually on compiling exhaustive publication lists of the earliest Japanese Romanists in collaboration with Yoshihara Joji, his elder brother. Although written in Japanese, they are accessible online (<https://home.hiroshima-u.ac.jp/tatyoshi/index3.html>, Accessed 18 April, 2021). His overview of Roman education in Japan in the earliest period is based on these works, on which I rely as sources.

⁴ Exactly when Rudorff terminated his lectures is unclear.

taught the subject from 1886 to 1889, along with the subject of jurisprudence, which he continued teaching as his own specialty. His experience in London and Berlin, as well as his lectures, will be briefly reviewed later. Heinrich Weipert, from Germany, taught Roman law from 1887 to 1889 (Yoshihara 2018, 4–6; Yoshihara 2019, 3).⁵ Michisaburo Miyazaki, who studied at Leipzig, Heidelberg, and Göttingen, returned to Japan and taught *Kodai Roma Hoh* (Ancient Roman Law), *Housei Enkaku oyobi Roma Hoh* (Historical Outlines of Legal Institutes and Roman Law) among other courses from 1888 to 1894 (Yoshihara 2019, 4).⁶ Then, Hirono Tomizu, who qualified as a barrister at Middle Temple and also studied in France and Germany, was appointed as Chair of Roman Law in 1894.⁷ Miyazaki changed positions, to Chair of Comparative Legal History.⁸ In this period, as Roman law education continued, there was a gradual replacement of professors previously invited from abroad by those of Japanese origin with Western academic experience, predominantly those with English and German educational backgrounds.

Here I would like to focus on Hozumi's educational background and lectures. He was Grigsby's top disciple and was appointed lecturer of jurisprudence and Roman law on returning from Europe in 1881; his promotion to professor and dean of the Faculty of Law followed in 1882 (Hozumi 1988, 261).⁹ He became a top scholar and statesman and was one of the three drafters (*San Hakushi*, the Three Doctors) of the Meiji Civil Code, which went into effect in 1898, following the well-known quarrel, which I will discuss later.

Let us briefly consider Hozumi's stay in London and Berlin in chronological order. He left for London on 24 June 1876, via the USA (Hozumi 1988, 121). Grigsby had prepared recommendation letters to certify that he could read Latin and that Hozumi had taken his course on Roman law (Hozumi 1988, 143–145). Hozumi went to King's College London and Middle Temple (Hozumi 1988, 146–151),¹⁰ where he studied common law and Roman law. He qualified, top-of-the-class, as a barrister on 25 January 1879 (Hozumi 1988, 163). In addition

⁵ Due to the rapid expansion and restructuring of the institution, including the incorporation of the *Tokyo Hoh Gakko* (Tokyo School of Law) as the successor to the school of the Ministry of Justice, in this period, Roman law was taught by many professors, with some variation in the subject name.

⁶ He also taught German legal history in 1892. The chair system (*Kohza Sei*) was officially adopted in 1893.

⁷ <https://www.nihon-u.ac.jp/history/forerunner/tomizu/> (Tomizu's CV in Japanese).

⁸ <http://www.nihon-u.ac.jp/history/forerunner/miyazaki/> (Miyazaki's CV in Japanese). Miyazaki later developed his study into a comparative legal history of Europe and the Far East (Japan, China, and Korea) and Japanese legal history. He was called "the founder of Japanese legal history," which, I would add, in a critical sense, he acquired through his study in Germany.

⁹ He also worked as a statesman and ultimately served as chief of the *Suhmitsu-in* (the Japanese Privy Council for the Emperor) from 1925 to 1926.

¹⁰ He is presumed to have studied at both institutions simultaneously.

to practising law there, he also studied common law, jurisprudence, and Roman law, both at King's College and at Middle Temple; he was profoundly influenced by contemporary English jurisprudence and European history of legal thought, mostly by H.S. Maine, followed closely, probably, by John Austin.¹¹

Despite his great success in London, Hozumi asked the Ministry of Culture and Education to transfer him from the Middle Temple to Berlin University, in a letter dated 1 May 1879 (Hozumi 1988, 213f., 383–387). Among the reasons for requesting the move from London to Berlin, he mentioned the excellence of German studies in Roman law as well as the advantage of developing comparative studies of law there (Hozumi 1988, 220f). His request was accepted, and he registered at Berlin University on 14 April 1880 (Hozumi 1988, 229f).¹² He attended some classes as an auditor, including the “History of *Corpus Iuris Civilis*” taught by Rudolf von Gneist (Hozumi 1988, 240). He left Berlin on 29 March 1881 for Tokyo (Hozumi 1988, 250).¹³ Even as a young scholar, he correctly foresaw a shift in national policy and redirected his studies from the English model to the German one. Indeed, the model country for the Westernisation of law and other fields gradually changed from the parallel coexistence of the English and French models to the German one in the 1880s, following his return.

Here, a glance at the lectures on “Roman Law” by Hozumi provide greater insight. Yoshihara recently published several extant notebooks written by students, with critical comparisons among many handwritten notes and commentaries.¹⁴

¹¹ Shigeyuki Hozumi infers the possible influence on Nobushige Hozumi by John Austin (Hozumi 1988, 173f.). Shigeyuki Hozumi infers that Hozumi was influenced by German jurisprudence via the works of Austin (Hozumi 1988, 174, 220f.). The source and mode of influence on his doctrine are not fully analysed in this study. However, it is patently obvious that Maine was the most important figure in the development of Hozumi's immense works; he wrote a book titled *Revenge and Law* (Hozumi 1931) as part of his Evolution Theory of Law (*Hohritsu Shinkaron*). In this book, he attempted a vast comparison among Japanese history, Chinese history, ancient Germanic society, contemporary natives in the Micronesian islands, Islamic states, etc., and attempted to trace the tendency of rationalisation from revenge to compensation. Although he was a busy statesman and scholar, and was not reported to have engaged in fieldwork, he worked, by manner of speech, as an armchair legal anthropologist. A good example of his historical and comparative jurisprudence, written in English, is Hozumi (1912). As the *de facto* chief drafter of the Meiji Civil Code and scholar of comparative and historical jurisprudence, he contextualised it both globally and in its own historical development, which was based on his framework of the genealogical method of comparison among the seven great families of law (Chinese, Hindu, Mohamedan, Roman, Germanic, Slavonic and English), and traced the passage of Japanese civil law from the Chinese family to the European family of law (Hozumi 1912, 35, 41).

¹² Here, Shigeyuki Hozumi quotes the certificate of registration by Berlin University.

¹³ Shigeyuki Hozumi quotes the report that was addressed to the Ministry of Education and Science.

¹⁴ For the first part of his lectures, see Yoshihara (2020a); for the second part, see Yoshihara (2020b). Yoshihara mainly relied on a copy stored in the National Diet Library of Japan (Yoshihara 2020a, 809–811).

Additionally, Yoshihara published an analysis on them, with the aim of delineating the influence of traditional and contemporary European legal thoughts. He concluded that Maine's grasp of Roman law influenced Hozumi's notion of Roman law significantly, although Hozumi energetically propelled the reception of German legal science in that period (Yoshihara 2018, 28–30). According to the notebooks, he delivered his lectures in two parts. The first part comprised of an introduction and a historical overview of the development of Roman law from the regal period to contemporary Roman law studies in Germany and England. In the introduction, Hozumi establishes four points to clarify the perfection of Roman law: (1) the precision of the terms, critical methods in editing, and abundance of both general principles and practicality, all of which offer precious material for analytical jurisprudence, (2) the position of Roman law as the basis for the laws of modern civilised countries and as precious material for comparative studies of laws, (3) the unique life course of the birth, development, and end of Roman law, which offers incomparable material for historical studies of law, and (4) the possible contribution of precious material in Roman law to international law (Yoshihara 2018, 9; Yoshihara 2020a, 819). Then follows the historical overview, in which he emphasises the Law of the Twelve Tables as the starting point of the evolution of the law (Yoshihara 2018, 11). Subsequently, the overview covers Justinian's legislation, Byzantine jurisprudence, the revival of Roman law in medieval Italy, and the development of Roman law studies in Europe, up to contemporary German and English law studies. The second part describes the various legal institutes and rules according to the composition of *Institutiones*.¹⁵ He deals with the law of persons (*ius personarum*) and the law of things (*ius rerum*), omitting the law of actions (*ius actionum*). I point out only one curious character in his lectures. At the beginning of the second part, Hozumi describes various fundamental notions of Roman law, such as *iurisprudentia*, *iustitia*, and *ius* (*ius publicum*, *ius privatum*, *ius civile*, *ius gentium*, *ius naturale*, etc.), which are treated at the Inst. 1,1–2.¹⁶ In describing them, Hozumi not only treats the texts compiled by Justinian, but also incorporates the discussions and doctrines of Western legal thinkers into the descriptions. For his lectures, the notions and institutions within the *Institutiones Justiniani* served as clues for explaining the posterior arguments regarding law in the West, as well as something to be taught in their original historical context. *Institutiones* was the very text with which Grigsby taught Roman law to Hozumi in

¹⁵ The textbook of Roman law by Tomizu (Tomizu [n.d.]) followed the *Institutionen* composition. In this period, the *Institutionen* composition was normal; later, Roman law textbooks with the *Pandekten* composition appeared. Okamoto's textbook, published in 1906 (Okamoto 1906) for the private Meiji University, is an early example. On its front page, the author bears the title "Doctor *Iuris*," conferred in Germany. The enactment of the Meiji Civil Code in 1898, which was composed according to the *Pandekten* system, might have been a turning point. However, tracing the transition from the former to the latter precisely requires further research.

¹⁶ Yoshihara (2020b, 42–62). This part is prescribed as the general part of the second part only, and appears immediately before the law of persons.

his youth. This formed the foundation of his argument on Roman law and various topics in jurisprudence. For example, he refers to the debate between Savigny and Thibaut in 1814, concerning the codification of German civil law, when he discusses various doctrines about the basis of law (Yoshihara 2020b, 48).

3. FRENCH TRADITION AND ROMAN LAW EDUCATION

In this section, the position of French law in Japan and the treatment of Roman law by the French legal tradition is considered. Since the last years of the Tokugawa government, Japanese political leaders have had a keen interest in French law. The Tokugawa government commissioned Rinshoh Mitsukuri, a scholar in Western studies, to translate major French acts. He continued serving the new government after the Meiji Restoration, and carried on with his translation activities. For example, he completed the translation of the French Civil Code in 1871.¹⁷ However, it became evident that merely having positive law was not sufficient to operate a legal system within a country, and the need to rear jurists, primarily judges, and then advocates, with expertise in law was recognised among political leaders in Japan. Therefore, as I hinted above, the Ministry of Justice established a law school in 1871, that focused primarily on teaching French law. It naturally continued promoting the French legal tradition founded by the Edo government, treating France as the ideal model for law. The school had a full 8-year course (*Seisoku-ka*) for studying the French language, general subjects, and, mainly, French law. Later, a shorter course (*Sokusei-ka*), with 2 or 3 years for mainly French law, was added.¹⁸ A few professors, invited from France, worked there, among whom the most eminent was Gustave Émile Boissonade de Fontarabie.¹⁹ He was already qualified as a full professor at the University of Paris, as an *agrégé*, when he received an offer. He accepted it and

¹⁷ Maeda (2014, 2). For a brief description of his career as a scholar and statesman, see <https://www.ndl.go.jp/portrait/e/datas/336.html>. He began his career as a scholar in Chinese and Dutch studies, later studying in France and adding French learning to his studies; however, he was not originally trained as a jurist and experienced difficulties in translating law (Okubo 1977, 33f.; Tezuka 1988, 8f.). Nonetheless, his translations were referred to as the *de facto* norm by judges at court who had few positive laws.

¹⁸ Regarding the *Seisoku-ka*, the first students began studying in 1872 (Tezuka 1988, 17f.). Regarding the *Sokusei-ka*, the first students entered in 1877 (Tezuka 1988, 111). The latter course was founded to fulfil the needs of judges, who were to be appointed to judicial courts and be rapidly deployed across Japan. The lectures in the latter course were translated into Japanese, while those in the former were in French (Okubo 1977, 54–57). Boissonade himself admits that the students, presumably belonging to the *Sokusei-ka*, heard his lectures on natural law via interpreters (Study group 1989, 89).

¹⁹ For his short biography in German, see Stolleis (1995, 95f.). On his arrival and activity see also Ume 1889, XI.

came to Japan in 1873 (Okubo 1977, 50).²⁰ He stayed in Japan until 1895, and worked as a counsellor for legislation and diplomacy for the Japanese government, and as a law professor during his long stay (Okubo 1977, 195).

It is difficult to know the school's detailed curriculum as it was later merged with the University of Tokyo, and records that had presumably been stored in the Ministry of Justice were destroyed in the bombing during the Second World War (Tezuka 1988, 4). However, Roman law was not taught as an independent subject. "Civil Law" (*Min-poh*), "Penal Law" (*Kei-hoh*), "Political Law" (*Sei-hoh*), "Administrative Law" (*Gyohsei-hoh*), "Commercial Law" (*Shoh-hoh*), and "Economics" (*Keizaigaku*) were recognised as special subjects.²¹ One characteristic subject was "Droit naturel" (*Sei-hoh*) because general law beyond the positive laws of each individual nation was taught in the name of natural law. In my understanding, the concept of natural law, so far as I can recognise in the records of Boissonade's lectures, was not a notion to criticise or guide the already existing positive law, although it did serve as a guideline for legislation in the future. It was introduced for pedagogical purposes. These lectures were aimed at future judges and attorneys in a country where positive laws were still in preparation and frequently absent in many fields. In this respect, a record of lectures, probably delivered at the *full 8-year course*, was published by the Ministry of Justice (Boissonade 1881).²² A notebook containing Boissonade's lectures, presumably handwritten by a student of *Sokusei-ka*, was also found, transcribed, and published by a research group at Kansai University (The Study Group 1989). Here, I deal with both.

In the lectures of natural law, Roman law is frequently emphasised as something fundamental that underlies French and other modern European laws or, conversely, criticised as something irrational or inhumane that had been overcome by contemporary European law. There are several examples: At the outset of the lecture, Boissonade quotes the famous prescription of Ulpianus: *Iuris praecepta sunt haec: honeste uiuere, alterum non laedere, suum cuique tribuere* (D. 1.1.10.1; Boissonade 1881, 14–17). He emphasises the teaching not to hurt others, and sees it as a general rule that applies universally to European laws, while he regards the distribution of individual rights and obligations as the second most important. Ulpianus was regarded as a Stoic thinker, while his beliefs were regarded in his lecture as closely related to Christianity (Boissonade 1881, 14). His prescriptions for

²⁰ When he began his education at the school, a French attorney (*avocat*), Georges Hilaire Bousquet, had been working there since 1872 (Tezuka 1988, 12). Thus, two professors from France with expertise in French law were engaged in teaching in 1873.

²¹ Tezuka (1988, 34f., 74f). Some recognitions rely on the personal record and notebooks of an alumnus, Johichiroh Tsuru.

²² Additionally, regarding this lecture, he taught in French, and the students at the *Seisoku-ka* had to comprehend the lectures in French. The extant record itself is in Japanese, while the recorder, Inoue, is presumed to have translated Boissonade's original lectures.

justice and law were the starting point of Boissonade's natural law. The exact notion of natural law in Boissonade's legal thought is in itself a major theme. Okubo (1977) sees it as a notion that overlaps with *raison* in accordance with the French legal tradition (61–67). Here, I propose that he intended to impart practical knowledge of civil law in European legal systems in general in his lectures. He intended to equip students with practical criteria on which to judge cases after their graduation, given the absence of a comprehensive positive law, which would take more than one decade to be enacted in Japan. Natural law, according to him, served as a criterion of which the starting point was the *alterum non laedere* motto in Ulpianus.

On the other hand, he criticises the continuation of the *patria potestas* of the *paterfamilias*, even after his son's maturity, as well as the lack of legal capacity of married women in Roman law (Study Group, 61, 76). The references to Roman law are frequent in both of the two extant records of the natural law lectures, to which I have referred.²³ It is easy to imagine that the students understood the importance of Roman law, and that they gained interest in the historical development of Western law from Roman law through his lectures at the beginning of their legal studies.

One noted achievement of the French legal tradition in Japan is the nurturing of scholars. Kenjiro Ume was among Boissonade's students and later obtained a doctoral degree from the University of Lyon (see Stolleis 1995, 627f). His thesis was on transactions in French contract law and contained 270 pages of arguments on classical Roman law. He wrote another paper on ancient French law, as well as one on modern French law (Ume 1889, 1–270).²⁴ It was not merely at the level of comprehending the general framework of Roman law, but went far beyond it, with the chosen theme presenting full citations of the doctrines of classical jurists and

²³ The occupation in French law coming from the *occupatio* in Roman law and the equal dividing principles of *hereditas* (Study Group 1989, 28, 52) are but examples of the numerous references to Roman law found in his lectures.

²⁴ Here, I provide some notes on the Roman law part of his paper, which consists of nine Chapters: I. General notions – Definition, characters, and proof of the transaction, II. Some forms of the transaction, III. On the object of the transaction, IV. Some persons who can make transactions, V. Some modalities of the transaction, VI. Some effects of the transaction, VII. Some persons by whom and through whom the transaction can be insisted, VIII. On the extent of the transaction, and IX. On the nullity, on the nullification, on the cancellation of the transaction. It presented an extensive treatment of the *transactio* in Roman law, which included its notions, effects, and every possible legal relationship coming from it. His argument was based on his solid knowledge of the law of obligations in general, not just the law of contract. He sometimes alluded to German scholars, e.g. Jhering (Ume 1889, VII), Glück (Ume 1889, 7), and Lenel (Ume 1889, 168 n. 2); however, principally, he based his arguments on the French scholarly tradition. His supervisor, Accarias, was frequently referred to; the textbooks of Ortolan, Appleton etc., and Molitor's book on the obligations of Roman law were referred to; sometimes, he traced back to Cujas and Doneau. Texts in the *Corpus Iuris Civilis* were cited in both Latin and French, considering the possibilities of interpolations. In sum, he traced the legal reasoning of Roman jurists precisely and critically. He was probably the first Japanese person to do so.

constitutions in the *Corpus Iuris Civilis*, as well as the doctrines of French scholars from Doneau and Cujas to the contemporary Accarias and Ortolan.

He later became one of three drafters of the Meiji Civil Code, along with Hozumi and Masaakira Tomii. Tomii did not learn law in Japan, but in France, and continued his studies until he obtained a doctoral degree from the University of Lyon (Tomii 1883; Stolleis 1995, 618). Other Japanese people followed them in becoming doctors of law in France, with their papers containing arguments on classical Roman law without exception (e.g. Inoue 1881 and Kumano 1883). They gained the knowledge of Roman law required to meet the standard of French academia for conferring a degree.

In summary, Roman law studies served as the basis for the French legal tradition in Japan in a more concrete and practical way that influenced legal reasoning, compared to the English tradition. For example, Ume was usually regarded as a scholar of civil law and was rarely regarded as a scholar of Roman law or as a legal historian, despite his profound knowledge of Roman law.²⁵

4. TURN FROM THE ENGLISH TRADITION TO THE GERMAN

The general model for Westernisation shifted from the UK and France to Germany in the 1880s, reflecting the struggle within the government and the victory of pro-German leaders, such as Kowashi Inoue (*Meiji 14 nen no Seihen*, Political Crisis of 1881; Takii 2003, 84–88). In the mid-1870s, a political movement was ignited with the goal of establishing a parliament, securing citizens' rights, and a democratic monarchy. Some politicians chose the UK, and others, France as a model of democracy. Within the government, some leaders seriously considered the British model as one more moderate than that of France. But the movement for democracy was oppressed by pro-Empire government actors. Leading pro-British statesmen were expelled from the government in the political change in 1881. Pro-German leaders chose Prussia as a model for the Japanese constitution with a strong sovereign power of the Emperor.

Then, Japanese political leaders visited Austrian and German scholars who majored in public and constitutional law and received lectures in the late 1880s which had a profound influence on the drafting of the Japanese constitution. Consequently, the Meiji Constitution, which was promulgated in

²⁵ In this footnote, I relate my personal experience. In his works on the transactions, Ume systematically analyses the so-called *stipulatio Aquiliana* in detail (Ume 1889, 37–46). The text in this formula for a creditor to settle every existing or potential charge to the debtor as already paid or abandoned is well known among Roman law scholars as complex and awkward (D. 46,4,18 Florentinus "*Institutiones*" 8; I. 3,29,2). He was probably the first Japanese scholar to treat it fully. I also wrote on the *stipulatio Aquiliana* and mentioned him as a forerunner on this topic (Hayashi 2013, 26).

1889, was based on the Prussian model and established a monarchy that allocated considerable power to the Emperor. This result was highly symbolic of the drastic Germanisation phenomenon of the period.²⁶

The situation had a profound influence on legal education. First, the Ministry of Justice's law school was renamed the *Tokyo Hoh Gakkoh* (Tokyo Law School) and placed under the jurisdiction of the Ministry of Science and Education in 1884 (Tezuka 1988, 101–108). Second, it was merged with the Faculty of Law, University of Tokyo in 1885 (Tezuka 1988, 105f). The education of French law itself continued, but lost its independence as the primary legal tradition of study with the introduction of German legal studies. In the short history of this institution, many alumni had become judges and attorneys.

Since 1879, Boissonade had been preparing a draft of the Japanese Civil Code, which he based on the French model of *Institutiones* and slightly adapted by himself (Okubo 1977, 134–136). It was finally enacted by Congress and promulgated in 1890 (Okubo 1977, 162). However, it was the focus of a serious political quarrel (*Minpoh Ronsoh*, Quarrel on the civil law) and was prevented from taking effect by a new resolution of Congress. Ume insisted on giving effect to Boissonade's Civil Code, which later came to be known as *Kyuh Minpoh* (Old Civil Law) by scholars. Tomii was against it, despite his French background (Okubo 1977, 170). The scholars with an English background, especially the staff at the *Igirisu Hohritsu Gakkoh*, were mainly opposed to it (Okubo 1977, 169). Hozumi did not participate in the quarrel by declaring emotional opinions, but took the standpoint of postponement for prudence by publishing a book on the vast comparative history of codification (especially Hozumi 1890, 22).²⁷ Consequently, those opposing the code won the quarrel.

After the frustration with Boissonade's Civil Code, the government ordered a new Civil Code to be drafted. Hozumi, Ume, and Tomii were appointed as the three principal drafters, with Hozumi the *de facto* chief. The new Civil Code was based on the *Pandekten* system and was promulgated in 1898 (Maeda 2004, 1119). It remains in effect to date, following repeated amendments. It is called *Meiji Minpoh* (the Meiji Civil Code), and is the work of the three Japanese Romanists, two of whom studied in France.²⁸ Although it is reported to be the result of references to various modern civil laws, it is difficult to classify it as an imported

²⁶ As a historian of constitution and comparative law, Takii sees the influence of German constitution theory as Japan's confrontation with the Western impact, in Takii (2003). In this book, he describes the diplomatic conflict between Japan and France concerning the change of military advisers from France to Germany by the Japanese government (Takii 2003, 162–164).

²⁷ He even refers to the legislation of Greek Draco and Solon, as well as the Roman twelve tables, not to mention the debate between Savigny and Thibaut, in Germany (Hozumi 1890, 4f., 8–14, 44–46).

²⁸ For the possible influence of Boissonade's studies on the Meiji Civil Code, see the contributions in Maison (1991). Generally, it is said that the Meiji Civil Code contains a lot of French elements, in substance, because two of the three principal drafters had a French background (see Takizawa 2018, 7; Okubo 1977, 194f).

German Civil Code, or restructured French one, except for its composition (Maeda 2004, 1118).

As I described above, the professors who were in charge of Roman law at the University of Tokyo had diverse academic backgrounds. Miyazaki studied in Germany, whereas Tomizu studied in England. At the turn of the 20th century, young scholars increasingly chose Germany to studying abroad. After codification in Japan, contemporary foreign law was taught less at the university. However, Roman law retained its position in the curriculum because it was independent of any contemporary national legal system.²⁹

5. CONCLUSION

My conclusion takes the form of an anecdotal epilogue. A journalist known only by the pen name of Kenzen Zanba wrote a series of articles entitled “Universities in the Cities East and West” in 1903 (Zanba 1903).³⁰ Although the author was not a scholar, and his criticism came from outside the academic community, his articles had an influence on public opinion and higher education at the time.³¹ In this book, he compared Hozumi and Ume, both of whom were professors at Tokyo Imperial University (Zanba 1903, 52–80).³² He contended that Hozumi had an interest in the fields of art, literature, the natural sciences, and philosophy, in addition to jurisprudence. Hozumi was an extensive reader, with a philosophical and fundamental approach. However, while his studies were

²⁹ I merely mention that Okamoto (1906) was a textbook for the private Meiji University, which bore the French legal tradition and did not, initially, teach Roman law independently. See also the above number.

³⁰ This pen name can mean “A sword which can slash a horse with the Buddhism spirit of Zen (or a warrior carrying such a sword and spirit?),” and is rather humorous. They were published in the *Yomiuri Newspaper*, with the main purpose of drawing a comparison between Tokyo Imperial University and the newly established Kyoto Imperial University (since 1897). The criticism covers the two institutions themselves and the professors in various fields as persons. Originally, the comments on Hozumi and Ume presented here were done in the comparative context of the former two on the one side at Tokyo, and Santaroh Okamatsu on the other side at Kyoto. However, I only introduce the passage concerning Hozumi and Ume, omitting the comments on Okamatsu.

³¹ Zanba’s criticism covered even the luxurious private lifestyle of Hozumi, who married Uta-ko, a daughter of Eiichi Shibusawa, who was a member of the bourgeois. Zanba also condemned Hozumi’s habit of staring at students from head to toe, like a rigorous scrutiny. As he was criticised for being snobbish, and for dominating his colleagues and students, despite his calm appearance, he submitted his own self apology in reply, which was published in the same newspaper (Zanba 1903, 81–84). For example, Hozumi said that he had a tendency to stare at the face of the person to whom he was talking for sincerity, and not for the purpose of harassing them. Hozumi took the criticism seriously and replied earnestly.

³² I found two mistakes in it. Hozumi studied in London, not in Cambridge, as the author says (Zanba 1903, 74), while Ume studied in Lyon, not in Lille, as he says (Zanba 1903, 59).

grand and extensive, Hozumi was not a quick thinker. In contrast, Ume's mode of argument was quick and coherent. He was good at solving concrete and practical problems, and his talent contributed immensely to the codification project. Ume had a keen and acute intelligence and was self-assertive, too. Ume was also a talented bureaucrat. However, his learning lacked profundity and breadth. In terms of ability in the Latin language, Ume was by far the more skilled of the two.

The above is an outline of Zanba's observations, which I consider to be not utterly wide of the mark in respect of the traits. Considering their careers and works as well as the experiences of study abroad, such a contrast was natural. Hozumi faced the grand theories of jurisprudence in England, while Ume obtained a deep understanding of the *exegesis* in the law of obligations in Roman law in France. As there had been neither a model nor tradition for Romanists in Japan until they were born, such a diversity was natural.³³ It enriched the legal education in late 19th century Japan. The penetration of the German approach follows the period treated in this article.

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³³ I am a little more attracted by Hozumi's approach. However, the acuteness and coherence of Ume's argument is extremely attractive in another dimension.

³⁴ The "(J)" signs following the titles denotes articles and sources in Japanese. Where a title in a European language by an original author or original authors is shown, it is quoted without quotation marks and the Japanese is omitted. Otherwise, I quoted the Japanese title in alphabet and added my provisional translation in "[]" brackets.

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